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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/555,459 05/31/00 FREDERICK

M 0/97322US

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EXAMINER

DEWITTY, R

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

04/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/555,459

Applicant(s)

FREDERICK ET AL.

Examiner

Robert M DeWitty

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, and 7 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Claims 1-7 are presently pending in the instant application.

Drawings

1. The drawings are objected to in accordance with the attached Form PTO-948.
Correction is required.

Specification

2. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Allowable Subject Matter

3. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Gero.

Gero (U.S. Pat. No. 4,692,143) teaches a sealed foil containing a ready-to-use vaginal article (vaginal contraceptive) premoistened with a spermicidal composition. The contraceptive unit is a sponge which has nonoxynol-9 spermicide in solution absorbed in and held by the voids or pores of the sponge (col. 2, lines 33-38). The sealed foil is a hermetically sealed sterile foil packet comprising two opposing sheets or films heat and/or pressure sealed around the periphery to form an enclosure for the sponge and to ensure sterility of the packet contents. The sheets may further comprise a foil-thermoplastic film laminate sealed together around their periphery (col. 4, lines 14-18).

Thus, the claims are anticipated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gero, further in view of the Japanese patent assigned to Hisamitsu Pharm Co. Ltd.

As stated above, Gero teaches a sealed foil containing a ready-to-use intravaginal article (vaginal contraceptive) premoistened with a spermicidal composition. However, Gero does not teach a sealed foil comprised of a barrier layer of a metal foil.

Japanese Patent (JP7223653) assigned to Hisamitsu Pharm Co. Ltd. teaches a laminating packaging bag for containing medicines. The bag is laminated, and has a structure of layers composed of paper/polyethylene/aluminum/polyethylene, and cellophane/paper/polyethylene/aluminum/polyethylene. It is further taught that the packaging bag can preserve contents well, and be easily cut to allow access to the contents.

Based on the art available at the time the invention was made, a laminated bag comprised of polyethylene and aluminum, whose contents contain a intravaginal article such as a vaginal contraceptive, would have been known to one of ordinary skill in the art. One with ordinary skill in the art would have been motivated to make such a bag in order to ensure preservation of the medicines contained with the intravaginal article, such as spermicide contained in the contraceptive.

Thus, the invention is made obvious.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4527. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7924.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD
April 4, 2001



JOSEPH G. DEES
SUPERVISORY PATENT EXAMINER
1616